

responses the plaintiff sought to compel would not be due until after October 17, 2008, the defendants argued that the discovery requests were untimely, precluding any obligation of the defendants to respond. (Doc. 51, p. 2). The defendants also pointed out that the motion to compel, which was filed on October 22, 2008, was itself untimely because the scheduling order provided that motions to compel were due on or before October 17, 2008. (Doc. 51, p. 3; Doc. 37, pp. 1-2). The plaintiff filed a reply. (Doc. 52).

Magistrate Judge Bivins denied the motion to compel. (Doc. 69). She focused on the untimeliness of the discovery requests themselves.

Rule 72(a) of the Federal Rules of Civil Procedure provides that this court should “modify or set aside any part of the [order on a nondispositive matter] that is clearly erroneous or is contrary to law.” FED. R. CIV. P. 72(a). As another judge in this judicial district recently explained:

The “clearly erroneous or contrary to law” standard of review is “extremely deferential.” Relief is appropriate under the “clearly erroneous” prong of the test only if the district court “finds that the Magistrate Judge abused his discretion or, if after viewing the record as a whole, the Court is left with a definite and firm conviction that a mistake has been made.” With respect to the “contrary to law” variant of the test, “[a]n order is contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of procedure.”

Pigott v. Sanibel Development, LLC, Civil Action No. 07-0083-WS-C, 2008 WL 2937804, at *5 (S.D. Ala. July 23, 2008) (alteration in original, citations omitted).

Nothing in the objection to the magistrate judge’s order shows that Magistrate Judge Bivins made a mistake or misapplied the relevant law. The plaintiff concedes that the discovery responses would have been due after the discovery deadline had passed. (Doc. 72, p. 1). She makes no convincing argument that the magistrate judge misapplied the relevant law. As such,

the objection is **DENIED**.

The defendants seek their reasonable expenses incurred in opposing the motion pursuant to Rule 37(a)(5)(B) of the Federal Rules of Civil Procedure. (Doc. 74, pp. 8-9). **This request is referred to the Magistrate Judge to determine whether the award is due, and if so, the amount.**

DONE and **ORDERED** this 17th day of February, 2009.

/s/ Callie V. S. Granade
CHIEF UNITED STATES DISTRICT JUDGE